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SUPREME COURT OF THE UNITED STATES.

No. 193.

SUSAN VIGEL, PLAINTIFF IN ERROR,

vs.

HENRY NAYLOR, ADMINISTRATOR OF GEORGE NAYLOR, DEC'D, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF COLUMBIA.

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GIDEON, Print.

Writ of Error.

UNITED STATES OF AMERICA,

The President of the United States to the Judges of the Circuit Court of the District of Columbia, sitting for the county of Washington, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you or some of you, wherein Susan Vigel is plaintiff, and Henry Naylor, administrator of George Naylor, is defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by her complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court to be then and there held, and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which if right, and according to the laws and custom of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of said Supreme Court.

Issued the 31st day of December, 1858.

JNO. A. SMITH, *C'lk.*

Citation.

DISTRICT OF COLUMBIA, *to wit.*

The United States of America to Henry Naylor, administrator of George Naylor, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the District of Columbia, sitting for the county of Washington, wherein Susan Vigel is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said Susan Vigel in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. James Dunlop, chief judge of the circuit court of the District of Columbia, this 31st day of December, 1858.

JAS. DUNLOP.

Appeal Bond.

Know all men by these presents, that I, Montgomery Blair, am held and firmly bound unto Henry Naylor, administrator of George Naylor, in the full and just sum of two hundred dollars, lawful money, to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly, by these presents. Sealed with our seals, and dated this 29 day of December, 1858.

Whereas lately at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein a certain Susan Vigel was plaintiff, and the said Henry Naylor, administrator of George Naylor, was defendant, judgment was rendered against the said plaintiff, and she having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Henry Naylor, administrator of George Naylor, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Susan Vigel shall prosecute her writ to effect, and answer all damages and costs if she fails to make her plea good, then the above obligation to be null and void; otherwise to be and remain in full force and virtue in law.

M. BLAIR. [SEAL.]

Signed, sealed, and delivered in the presence of—
CHS. MCNAMEE.

Approved:

JAS. DUNLOP.

DISTRICT OF COLUMBIA, *to wit.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, being the eighteenth day of the same month, in the year of our Lord one thousand eight hundred and fifty eight, and of the independence of the United States the eighty-third.

Present, the Hon'ble James Dunlop, chief judge; James S. Morsell, William M. Merrick, assistant judges; William Selden, esq., marshal; John A. Smith, clerk.

In the record of the proceedings of the said court, among others are the following, to wit:

SUSAN VIGEL
vs.
HENRY NAYLOR, Administrator of George Naylor, deceased.

Be it remembered, that heretofore, to wit, on the ninth day of August, in the year of our Lord one thousand eight hundred and fifty-eight, the said Susan Vigel, by M. Blair, esquire, her attorney, filed in court here the following petition, to wit:

Petition.

To the Honorable the Judges of the Circuit Court of the District of Columbia:

Your petitioner respectfully represents unto your honors that she is free, and is unjustly detained in slavery by said defendant, and prays that defendant be summoned to appear before your honorable court to make answer hereto, and upon the hearing give judgment against defendant, and grant your petitioner such other and further relief as your petitioner may apper to be entitled to, and your petitioner will ever pray, &c.

M. BLAIR,
For Petitioner.

(Defendant's appearance, and plea of not free, and issue joined. Venire facias.)

Whereupon subpœna issued as prayed, and the said Henry Naylor, by Joseph A. Bradely, esq., his attorney, comes into court here, and defends the complaint aforesaid, when and where the said court shall take the same into consideration, and for plea he says that the said petitioner is not entitled to her freedom as alleged, and of this he puts himself upon the country, and the said petitioner in like manner, and so forth.

Therefore let a jury thereon appear before the court here immediately, by them, &c., by whom, &c., and who neither, &c., to recognise, &c., because as well, &c., who being called, come, to wit:

Jury.

1. William Cooper; 2. Samuel Fowler; 3. Cephas Simmons; 4. John Bittenger; 5. Anthony Addison; 6. Thomas Brown; 7. Reuben B. Clarke; 8. Samuel Pumphrey; 9. John E. Neale; 10. William Murphy; 11. Thomas Sylvester; 12. Edmund G. Duley.

Verdict.

Who being duly elected, empanelled and sworn to say the truth in the premises, upon their oath do say, that the said petitioner is not entitled to her freedom as she above alleges.

Judgment on Verdict.

Therefore it is considered by the court here, that the said Susan Vigel, the petitioner aforesaid, is not free, as she in pleading for herself hath above alleged, and that the said petitioner take nothing by her petition aforesaid, but go thereof without day, &c. It is further considered by the court here that the said Henry Naylor recover against the said Susan Vigel the sum of dollars and cents for his costs and charges by him about his defence in this behalf sustained.

Test: JNO. A. SMITH, *Clerk.*

Memorandum. Before the jurors aforesaid withdrew from the bar of the court here, the said petitioner, by her attorney aforesaid, filed in court here the following bill of exceptions, to wit:

JNO. A. SMITH, *Clerk.*

Petitioner's Bill of Exceptions.

Be it remembered, that on the trial of this cause the petitioner gave in evidence the following extract from the will of John B. Kirby, deceased:

"Item. It is my will that all my slaves that are over the age of thirty-five years shall be free immediately after my death, and all my slaves that are under the age of thirty-five years shall serve, the males till they arrive to the age of thirty-five, and females to the age of thirty years, after which respective ages they, and each of them, shall be free, and my executor is accordingly authorized, by proper deeds in writing, to execute this clause of my will. Should any of my female slaves have children during their period of service as aforesaid, it is my will that the male children serve until they are thirty-five, and the females until they are thirty years of age, and then be free; and in all cases of future female descendants, the males shall never serve beyond thirty-five, nor the females beyond thirty years of age, and then in all cases they shall forever after be free."

Talbert, a witness for petitioner, then testified that a few days after the death of said Kirby, which took place in the year 1828, George Naylor brought to his house, where witness was then at work, the petitioner and her mother and sister, and said George Naylor stated to witness at the time that he had brought said negroes from the residence of the said Kirby, and that the petitioner was then between six and eight years of age.

The petitioner then offered to prove that her brother Richard, and her mother Sarah, and her sister Eliza, had obtained their freedom under the said will; the two latter by suits, one brought by Sarah in 1835, in which judgment was rendered in 1838, which was defended by said Geo. Naylor, who claimed to own said negro woman Sarah, and that by Eliza brought to the March term of the court of 1840, and in which judgment was obtained against the

defendant in 1842, and that it is very unusual for slaves of the age of petitioner, at the time of Kirby's death, to be separated from their parents, but the court excluded this testimony from the jury; to which decision of the court, refusing to admit this testimony, the petitioner, by her counsel, at the time excepted.

On the part of the defendant, his brother, Naylor, and his niece, Mrs. Tolson, testified that they had known the petitioner from her birth; that she was born the slave of said George Naylor; that they had been in the habit of seeing her almost daily, and they had never known her to be out of the possession of George Naylor in his lifetime, or of his administrator, the defendant, since his death.

The court, at the request of the petitioner, instructed the jury as follows:

If the jury believe, from the evidence, that the negroes were in possession of Kirby at the date of his death, that is evidence of ownership, provided that possession is unexplained, unless, upon the whole evidence, the jury shall think such possession was without claim of title.

The jury found a verdict for the defendant.

The petitioner prays that this, her bill of exceptions, may be signed and made part of the record; which is done accordingly this 23d day of Nov'r, 1858.

JAS. DUNLOP, [SEAL.]
JAS. S. MORSELL, [SEAL.]
WM. M. MERRICK. [SEAL.]

DISTRICT OF COLUMBIA,
Washington County, to wit.

I, John A. Smith, clerk of the circuit court for the District of Columbia for Washington county, hereby certify that the aforegoing is a full, true, and perfect transcript of all the proceedings had in the cause of Susan Vigel, plaintiff, against Henry Naylor, administrator of George Naylor, deceased, defendant, taken from the minutes and proceedings of the said court, and in pursuance to the writ of error in said cause filed, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with said writ of error and a copy of the citation and appeal bond hereto annexed, is transmitted to the said Supreme Court accordingly.

In testimony whereof I have hereto subscribed my name and affixed the seal of the said court, this 11th day of January, 1859.

[L. S.] JNO. A. SMITH, *Cl'k.*

Filed 19th January, 1859.